

### **REMARKS**

The office action rejected pending claims 1-13. Claims 1 and 11 have been amended in a similar manner to clarify the subject matter. Claims 14-20 have been added; Claims 14-17 depend from independent claim 1 and claims 18-20 depend from independent claim 11. No new matter has been added. Applicant respectfully asserts the patentability of the application and requests allowance of the application for the reasons below.

#### **Specification**

The office action objected to the disclosure because of the following informalities: Applicant must provide the application number of the U.S. Patent Application being referenced on page 1 under "CROSS REFERENCE TO RELATED APPLICATION" of the specification.

Applicant has amended the specification to include the application number. Applicant respectfully requests withdrawal of this objection in light of the above amendment.

#### **Drawings**

Applicants submit another copy of a first drawing sheet labeled FIG. 1 and a second drawing sheet labeled FIG. 2 and 3 in compliance with 37 CFR 1.121 (d). In view of the above submission, Applicant respectfully requests withdrawal of this objection.

### Double Patenting

Claims 1 and 11 have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,721,834.

To clarify the subject matter, claims 1 and 11 have been amended to recite a method that includes determining a second data rate based on **an attribute of data for transmission** to the receiver. In contrast, claim 1 of the '834 patent determines a second data rate based on a **channel condition**. Applicant submits that a channel condition is a characteristic of a transmission channel and is not the same as an attribute of data for transmission such as the data size. Thus, Applicant believes that the conflicting claims are patentably distinct from each other and therefore a terminal disclaimer is not necessary. In view of the above, Applicant respectfully requests that the Examiner withdrawal the rejection.

### Claim Rejections – 35 USC §103

Claims 1, 2, 4, 5, 11 and 12 have been rejected under 35 USC 103(a) as being unpatentable over Reed (U.S. 4,939,731) in view of Kameda (U.S. 5,940,772).

Claim 1 has been amended to clarify the subject matter of the present invention. In particular, claim 1 has been amended to recite a method that includes determining a second data rate based on **an attribute of data for transmission** to the receiver. Applicant respectfully submits that Reed and Kameda, alone or in combination, fail to teach or suggest this feature of claim 1.

As explained in a previous response, Reed discloses a transmission system that determines whether a data transmission rate is modified based solely on channel characteristics. That is, if a channel is determined to be “poor (high error),” then a transmission baud rate is decreased. (See column 5, line 4-6). Therefore, it is clear that Reed does not take into consideration **an attribute** of the data for transmission when determining a data transmission rate. Applicant believes that independent claim 1 is allowable over Reed for at least the indicated limitations of claim 1.

Likewise, Kameda is directed to a method of data transmission that includes determining data rate changes based on channel characteristics. For example, data rate changes are based on **circuit changes** in a radio section. (See column 1, lines 22-35) Fig. 1 shows a block diagram of networking apparatus 6 having a control section 62 to evaluate the **circuit quality** to determine changes in the data rate. In other words, Kameda makes a data rate determination based on channel characteristics, whereas in the claimed invention, data rate determination is based on **an attribute of data** such as the size of the data.

Thus, Reed and Kameda, alone or in combination, fail to teach or suggest the claimed invention as recited in amended claim 1 for at least these reasons. Claim 11 has been amended in a similar manner as claim 1 and should be allowable for at least the same reasons as claim 1. With regard to the remaining rejected dependent claims, it is believed that these claims are allowable at least due to their dependence upon an allowable independent claim.

Claims 1, 2, 4, 5, 11 and 12 have been rejected under 35 USC 103(a) as being unpatentable over Reed in view of Corke (U.S. 6,414,938). For the reasons explained

above, Reed fails to teach or suggest the claimed invention. Applicant respectfully submits that Corke fails to teach or suggest independent claim 1 for at least the following reasons. As stated by the Examiner, Corke discloses a system that transmits a message containing a channel condition to be used to shift or adjust the rate. In other words, Corke shifts a data rate based on channel characteristics, whereas in the claimed invention, data rate determination is based on **an attribute of data** such as the size of the data.

Thus, Reed and Corke, alone or in combination, fail to teach or suggest the claimed invention as recited in amended claim 1 for at least these reasons. Claim 11 has been amended in a similar manner as claim 1 and should be allowable for at least the same reasons as claim 1. With regard to the remaining rejected dependent claims, it is believed that these claims are allowable at least due to their dependence upon an allowable independent claim.

Claims 3 and 13 have been rejected under 35 USC 103(a) as being unpatentable over Reed in view of Kameda and in further view of Wang (U.S. 5,838,267). Claims 3 and 13 have been rejected under 35 USC 103(a) as being unpatentable over Reed in view of Corke and in further view of Wang. Claims 6-10 have been rejected under 35 USC 103(a) as being unpatentable over Reed in view of Kameda. Claims 6-10 have been rejected under 35 USC 103(a) as being unpatentable over Reed in view of Corke. With regard to these remaining rejected dependent claims, it is believed that these claims are allowable at least due to their dependence upon an allowable independent claim as explained above.

**Request for Reconsideration pursuant to 37 CFR 1.111**

Having responded to each and every ground for objection and rejection in the Office Action mailed on December 1, 2004, Applicant requests reconsideration in the instant application pursuant to 37 CFR 1.111 and requests that the Examiner allow claims 1-20 and pass the application to issue. Please charge any fee due to our Deposit Account No. 50-1561, and reference Attorney Docket No. 29633.047800. If there is any point requiring further attention prior to allowance, the Examiner is asked to contact Applicants' counsel who can be reached at the telephone number listed below.

Respectfully,

By Claude R. Narcisse  
Claude R. Narcisse  
Reg. No. 38979  
(212) 801-3190

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